

REMARKS

Claims 1-7 and 9-21 are pending in this application after this Amendment. Claims 1, 5, 9, 15, and 17 are independent. Claim 8 has been canceled without prejudice or disclaimer to the subject matter contained therein. Based on the amendments and remarks made herein, Applicants respectfully request reconsideration and withdrawal of the outstanding rejections.

By this Amendment, Applicants have amended the claims to more appropriately recite the present invention. It is respectfully submitted that these amendments are being made without conceding the propriety of the Examiner's rejection, but merely to timely advance prosecution of the present application.

In the outstanding Official Action, the Examiner rejected claims 1-2, 4-5, 7, and 9-16 under 35 U.S.C. § 102(e) as being anticipated by *Gottzman et al.* (USP 6,134,548); and rejected claims 3, 6, 8, and 17 under 35 U.S.C. § 103(a) as being unpatentable over *Gottzman et al.* Applicants respectfully traverse these rejections.

Claim Rejections - 35 U.S.C. § 102

By this Amendment, Applicants have amended claim 1 to recite a settlement system comprising an order placing device for storing order information including merchandise information specifying the merchandise that the buyer orders; and an order intake device which obtains the order information from the order placing device, and obtains payment for the merchandise on behalf of the seller.

Applicants maintain that claim 1, as amended, is not anticipated by the teachings of *Gottzman et al.*

The disclosure of *Gottzman et al.* is directed to a system, method and article of manufacture for advanced mobile bargain shopping. The system facilitates Web-based comparison shopping by providing for a hand-held wireless device including a miniature barcode reader to obtain a definitive product identification from the product. The wireless device transmits the definitive product identifier to a service routine which queries the Web to find price, shipping, and availability information on the product from various Web suppliers. This information is formatted and displayed on the hand-held device's screen. The user may then use the hand-held device to place an order interactively (Abstract).

Specifically, *Gottzman et al.* discloses pocket BargainFinder Service Module 940 which contacts the appropriate third-party Website to find price, shipping, and availability information on the product from various Web suppliers. Utilizing the wireless modem, a user may utilize the Web server software 940 to identify the right product 950 and then use an appropriate device's keys to select a supplier and place an order in accordance with a preferred embodiment. The BargainFinder Service Module then consummates the order with the appropriate third-party Web supplier 960 (col. 31, line 65 - col. 32, line 4).

In contrast, as noted above, the present invention as set forth in claim 1 recites, *inter alia*, obtaining payment for the purchase on behalf of the seller. As noted above, *Gottzman et al.* merely provides the user with price, shipping, and availability information on a particular product. There is no teaching or disclosure in *Gottzman et al.* that is directed to obtaining payment for the merchandise on behalf of the seller. As *Gottzman et al.* fails to teach or suggest all of the claim elements, it is respectfully submitted that claim 1, as amended, is not anticipated by *Gottzman et al.*

It is respectfully submitted that claims 2-4, 6-7, and 18 are allowable for the reasons set forth above with regard to claim 1 at least based upon their dependency on claim 1. It is further respectfully submitted that claims 5, 9, and 15 contain elements similar to those discussed above with regard to claim 1 and, thus, these claims, together with claims dependent thereon, are not anticipated by *Gottzman et al.*

Claim Rejections - 35 U.S.C. § 103

By this Amendment, Applicants have amended claim 17 to recite an information providing device which provides, to a terminal via a communications network, a barcode image generated in accordance with display section specs of the terminal as merchandise information specifying merchandise which a buyer orders.

The Examiner takes Official Notice that it is well known to pass information via bar code. Applicants respectfully traverse the Examiner's Official Notice.

It is respectfully submitted that claim 17 provides a barcode image generated in accordance with display section specs of the terminal as merchandise information specifying merchandise which a buyer orders. Applicants respectfully submit that it is not well-known to provide a barcode image as set forth in the claim. Further, as noted by the Examiner, *Gottzman et al.* fails to teach or suggest receiving the order information by scanning a bar code from the order device.

In order to sustain a rejection under 35 U.S.C. § 103(a), it is respectfully submitted that the Examiner must meet his burden to establish a *prima facie* case. "To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference to combine the reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all of the claim limitations." *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

As the Examiner has admitted that *Gottzman et al.* fails to teach all of the claim elements, and as the Applicants maintain the

deficiencies of *Gottzman et al.* are not well known, it is respectfully submitted that the Examiner has failed to provide references that teach or suggest all of the claim elements and, thus, has failed to establish *prima facie* obviousness. As such, it is respectfully requested that the outstanding rejection be withdrawn.

Should the Examiner maintain his position that providing barcode images as set forth in the claim is well known, it is respectfully requested that the Examiner provide a properly combinable reference that cures the deficiencies of the teachings of *Gottzman et al.*

Additional Remarks

On January 9, 2002, Applicants filed an Information Disclosure Statement. To date, Applicants have not received a signed copy of the Form PTO-1449. Applicants respectfully request consideration of the documents contained in the Information Disclosure Statement.

Conclusion

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Catherine M. Voisinnet (Reg. No. 52,327) at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.


If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By  #19382

Charles Gorenstein, #29,271


CG/CMV/jdm
1248-0557P

P.O. Box 747
Falls Church, VA 22040-0747
(703) 205-8000